



## Idaho Sheriffs' Association

1087 W. River St. Ste. 100  
Boise, ID 83702  
208-287-0001  
idahosheriffsassociation.com

### *Officers, Board of Directors and Staff*

*President: Sheriff Gary  
Raney, Ada County*

*First Vice-President:  
Sheriff Paul Wilde,  
Bonneville County*

*Second Vice-President  
and Secretary: Sheriff  
Chris Goetz, Clearwater  
County*

*Immediate Past  
President: Sheriff Daryl  
Wheeler, Bonner County*

*Sheriff Chris Smith,  
Canyon County*

*Sheriff Dave Sanders,  
Camas County*

*Sheriff Kevin Ellis,  
Lincoln County*

*Sheriff Mitch Alexander,  
Shoshone County*

*Sheriff Patti Bolen,  
Valley County*

*Cindy Malm, Jail  
Standards  
Coordinator/Inspector*

*Tammara Slater, Victim  
Services Coordinator*

*Mike Kane,  
Lobbyist/Advisor*

*Kristin Cundiff, Events  
Manager*

*Vaughn Killeen,  
Executive Director*

April 19, 2013

### **WC Docket No. 12-375, FCC 12-167**

Federal Communications Commission; Rates for Interstate Inmate Calling Services

Comment on Proposed Rule Making by the Idaho Sheriffs' Association

The Idaho Sheriffs' Association (ISA) represents all 44 Idaho sheriffs who are charged with maintaining jail facilities and providing inmates meaningful access to communicate with the outside world. Operating a jail requires a careful balance between the needs of inmates housed in the facility with the need to maintain the safety and security of staff, inmates, and visitors to the facility. The United State Supreme Court has stated time and again that:

Maintaining safety and order at detention centers requires the expertise of correctional officials, who must have substantial discretion to devise reasonable solutions to problems. A regulation impinging on an inmate's constitutional rights must be upheld "if it is reasonably related to legitimate penological interests." *Turner v. Safley*, 482 U.S. 78, 89, 107 S. Ct. 2254, 96 L. Ed. 2d 64. (Quoted recently in *Florence v. Board of Chosen Freeholders*, 132 S. Ct. 1510 (2012).

It is important to note that there is no binding US Supreme Court or US Court of Appeals case establishing that inmates have a right to telephones at all. *See Holloway v. Magness*, 666 F3d 1076 (2012) (discussing history of 1<sup>st</sup> Amendment communications jurisprudence in corrections settings). That this issue has never been litigated is due, at least in part, to the fact that jail/corrections facilities were incentivized by revenue sharing systems to provide telephone systems for inmates. Jail and corrections administrators had little reason to restrict inmate phones so long as the telephone companies were providing the tools to maintain security, and also providing a much needed revenue stream for jail operations including inmate programs.

If the FCC enacts price caps which severely reduce or eliminate the financial incentive of private telephone companies to provide inmate phone service (and the

security features that are imperative to such services), some jails will simply be unable to afford to provide phone services to inmates at all. There is no question that the capping of inmate phone call rates by the FCC will have serious impacts on the safety and security of correctional facilities – the revenue stream associated with inmate phone calls pays for the additional security measures necessary to maintain institutional security. The importance of these measures is demonstrated by the huge number of criminal cases that are resolved every year when an inmate phone call is submitted into evidence. Those cases, which are resolved quickly due to the overwhelming nature of the evidence, have a tremendously beneficial impact on the entire criminal justice system, saving time and money for the police, courts, and both prosecuting and defending attorneys.

These important security measures, including the ability to monitor, record and block inmate telephone calls are provided without additional charge to correctional facilities by the telephone providers. Without these security measures, the risks to institutional security and public safety would quickly outweigh the benefits of allowing inmate telephone access.

As stated above, correctional facilities have broad authority to restrict an inmate's access to telephones when the restriction is reasonably related to legitimate penological interests. If inmate telephone systems present serious risks to institutional and public safety due to a lack of security measures, those risks would easily justify the restriction or elimination of inmate telephone privileges under the rational basis test that the court has set forth for balancing inmates rights in *Turner v. Safely*.

To put it bluntly, the proposed inmate communication system (ICS) rate reforms proposed by petitioners may well reduce long-term inmate access to telephone services in correctional facilities, because petitioners do not see the entire relationship between ICS, telephone companies, and institutional safety and security. If correctional institutions cannot ensure that inmate phone calls are not a threat to the safety of the facility and the public, many will choose to remove phones entirely (except perhaps for attorney calls).

Recent technological advances by ICS providers have opened up new avenues for inmates to communicate with the outside world. These advances include kiosks in the inmate housing units that will allow inmates to communicate with their friends and family by video conferences and email. This kind of technology could not be implemented in a correctional setting except through partnerships with creative, entrepreneurial companies who have the capital and intellectual property to take this kind of risk. To thwart the incentives for ICS providers to provide these type of technological advances would be a disservice to the inmates, jail facilities, and the public.

We would encourage the FCC to defer to the expertise of jail staff in regard to how best to address the operational aspects of a detention facility, including how to obtain ICS and the related security measures needed to protect the facility and the public.

In summary, the unintended consequence of the petitioner's efforts to reduce telephone costs to inmates will be the removal of some ICS systems in Idaho jails as revenues would not be sufficient to maintain the systems, and provide added security which results in increased public safety. Vendors provide their equipment and services at no upfront cost to counties as this is paid by inmates, their families and friends for the privilege of voice communications rather than written communication. If petitioners are successful, revenues would not justify vendor investment in phone systems and Idaho counties could not afford them.

Sincerely,

A handwritten signature in black ink, appearing to read "Vaughn Killeen". The signature is fluid and cursive, with a long horizontal stroke at the end.

Vaughn Killeen  
Executive Director